

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PATRICIA EARNEST, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2:19-cv-3611
	:	
JOANN ELLISON, <i>et al.</i>,	:	
	:	JUDGE SARAH D. MORRISON
	:	Magistrate Judge Chelsey M. Vascura
Defendants.	:	

ORDER

This matter is before the Court for consideration of a Report and Recommendation (“R&R”) issued by the Magistrate Judge on January 3, 2020. (ECF No. 10). Therein, the Magistrate Judge recounted her December 13, 2019 Order requiring Plaintiffs to show cause why the case should not be dismissed for failure to effect service under Fed. R. Civ. P. 4(m) and for failure to prosecute. (ECF No. 8.) The Order cautioned Plaintiffs that failure to respond could result in their case being dismissed. *Id.* Plaintiffs did not respond, so the R&R was issued. The R&R suggested that the case should be dismissed for failing to prosecute for lack of service and to provide the Court with an updated mailing address. (ECF No. 10.)

Plaintiffs Patricia Earnest and Janet Kelly filed their “Motion for Relief from Judgment or Order Motion to Set Aside Court Order Dated October 28, 2019” on January 13, 2020. (ECF No. 11.) That filing, which the Court shall treat as an objection to the R&R, seemingly argues that service was effected on Defendants Joann Ellison and Alphonse Cincione such that the Court should not adopt the R&R but should instead reverse the Magistrate Judge’s October 28,

2019 Order denying Plaintiffs' motions for default for lack of service.¹ But the docket reflects only that summons were issued as to those individuals, not that service was perfected upon them. This ground of objection is therefore **OVERRULED** and the relief sought is **DENIED**.

Accordingly, the Court **OVERRULES** Plaintiff's Objections to the R&R and **DENIES** Plaintiff's Motion to Set Aside Court Order Dated October 28, 2019. (ECF No. 11.) Thus, the Court hereby **ADOPTS** the R&R (ECF No. 10) and **DISMISSES** Plaintiffs' Complaint **WITHOUT PREJUDICE**.

Plaintiffs are **ORDERED** to list 19cv-3611 as a related case should they choose to re-file.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE

¹ Judge Belskis is listed as a defendant in the Complaint's case caption and is mentioned in the body of the Complaint. Plaintiffs do not address whether he was served, and the docket does not indicate that a summons was issued as to him. Jack Gibbs is also a named defendant. Plaintiffs do not address whether he was served, either.